

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 05-11509  
Non-Argument Calendar

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FILED  
U.S. COURT OF APPEALS  
ELEVENTH CIRCUIT  
August 26, 2005  
THOMAS K. KAHN  
CLERK

D. C. Docket No. 04-61083-CV-JIC

TRACY M. BARNES,

Plaintiff-Appellant,

versus

ETHAN ALLEN, INC.,  
a foreign corporation,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Florida

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(August 26, 2005)

Before BIRCH, BARKETT and COX, Circuit Judges.

PER CURIAM:

Tracy M. Barnes appeals the judgment of the district court, arguing that it was error for the court to grant Ethan Allen, Inc.'s motion for summary judgment. We

agree with the district court that the doctor's note provided to Barnes on January 14, 2004, does not qualify as a proper "fitness-for-duty certificate" under the Family and Medical Leave Act ("FMLA") regulations. *See* 29 C.F.R. § 825.311.

Barnes's brief, construed liberally, arguably contends that Ethan Allen waived any right to a fitness-for-duty certificate. Implicit in this argument is a contention that Barnes could have furnished such a certificate if asked. The record, however, refutes this contention. The letter from Dr. Marchi submitted to Ethan Allen on March 23, 2004, states that Barnes was incapacitated and unable to work until March 23, 2004 – a date well beyond the expiration of her twelve weeks of FMLA leave.

AFFIRMED.